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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1996

Addendum

UKRAINE*

[19 June 1996]

* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44) paras. 503-532. For the second periodic report, see CAT/C/17/Add.4; for its consideration, see CAT/C/SR.125 and Add.2 and Official Records of the General Assembly, forty-eighth session, Supplement No. 44 (A/48/44), paras. 116-132.

GE.96-17256 (E)

I. INTRODUCTION

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention, which entered into force in Ukraine on 24 February 1987.

2. It has been compiled in accordance with the general guidelines regarding the form and content of reports to be submitted by States Parties under article 19, paragraph 1, of the Convention.

3. It covers the period from 1992 to 1996.

4. It was prepared as a collaborative effort by the Ukrainian Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Office of the Public Prosecutor, the Security Service and the Supreme Court.

5. Since the submission of its second periodic report in 1992, Ukraine has followed an unswerving policy of advancing the interests of the individual over those of society and of according primacy to international law, as reflected in the new draft Ukrainian constitution. On 22 December 1991 the Supreme Council of Ukraine passed the Act on Ukraine's International Treaties, article 17 of which reads:

> 1. International treaties concluded and subject to ratification by Ukraine shall constitute an inseparable part of Ukrainian national legislation and shall be applied in the same manner as the stipulations of national legislation.
>
> 2. If an international treaty to which Ukraine is party, concluded by means of a law, lays down rules other than those established in Ukrainian legislation, the rules laid down in the international treaty shall apply.

6. On 9 November 1996, Ukraine joined the Council of Europe. It is working hard to bring its legislation into line with European norms and standards. An Order by the President of Ukraine on 11 March 1996 set up a State Interdepartmental Commission on the incorporation of Council of Europe norms and standards into Ukrainian legislation.

7. A draft constitution has been drawn up and was, when this report was submitted, before the Supreme Council of Ukraine for consideration. The draft has been much praised by foreign experts.

8. In March 1996 the Ukrainian Ministry of Justice drew up a draft outline of State legal policy on human rights. Work is proceeding on plans for legal and judicial reform, but completion of the reform has been delayed pending adoption of the constitution.

9. Various working groups comprising experts from all parts of the Government apparatus concerned have drawn up and submitted for consideration by Supreme Council commissions drafts of a Ukrainian penal code, a code of criminal procedure, a civil code, a code of civil procedure, and a penal correction code, all grounded in basic international legal norms and standards. In parallel, the existing codes have been amended and amplified.

10. As this report was being compiled, the European Convention for the prevention of torture and inhuman or degrading treatment or punishment was awaiting signature.

11. On 9 November 1995, at the official ceremony marking its entry into the Council of Europe, Ukraine signed the European Convention on Human Rights and Protocol No. 2 to the Convention. Work on the documents required for ratification of the Convention and related protocols is in progress.

12. Since it proclaimed its independence, Ukraine has been taking steps to limit the death penalty in existing legislation. The number of crimes for which a death sentence can be handed down has fallen from 19 to 5. These now are:

making an attempt on the life of a figure of State (art. 58 of the Penal Code);

making an attempt on the life of a representative of a foreign State (art. 60 of the Penal Code);

wilful homicide in aggravating circumstances (art. 93 of the Penal Code);

making an attempt on the life of a militiaman, a national guardsman or a member of the armed forces in connection with his efforts to maintain law and order (art. 230 para. 2 of the Penal Code).

Despite these important changes, however, there has been a marked tendency in recent years for the numbers of death sentences handed down and carried out in Ukraine to increase. In 1991, for example, 112 people were sentenced to death and 42 were executed; in 1992, 103 were sentenced and 79 executed; in 1993, 317 were sentenced and 78 executed; in 1994, 143 were sentenced and 103 executed; and in 1995, 191 were sentenced and 149 executed. It should be noted that the process of signing and ratifying Protocol No. 6 to the European Convention on Human Rights, which calls for the death penalty to be abolished in peacetime, is under way.

13. The Supreme Council of Ukraine also passed the following legislation relating to the implementation of the Convention between 1992 and 1996:

An Act amending and amplifying several pieces of Ukrainian legislation in connection with the proclamation of Ukraine as an independent State (extending the powers of the courts and the Public Prosecutor's Office, revising the procedure whereby citizens can appeal against the imposition of administrative penalties by officials and official bodies, etc.)

An Act amending the Penal Correction Code (bringing the conditions in which convicts are held into line with international norms and standards)

An Act amending and amplifying the codes of criminal and civil procedure (as regards reimbursement of the costs of in-patient treatment for crime victims)

An Act on pre-trial detention

An Act amending the Code of Criminal Procedure (enhancing the right to defence)

An Act on the legal profession

An Act on the status of judges

An Act on the procedure for compensating citizens who have suffered injury owing to illegal action on the part of investigative and (judicial) examining bodies, the Public Prosecutor's office or the courts

An Act on the bodies and services dealing with minors

An Act on the Security Service of Ukraine

An Act on the work of detectives

II. NEW MEASURES AND CHANGES AFFECTING IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE

Articles 1-16

Article 1

14. In accordance with article 7 of the Judicial System Act, justice in Ukraine is administered in precise conformity with Ukrainian legislation. In instances provided for under international agreements, the Ukrainian courts apply the law in accordance with the agreements concerned (Act of 24 February 1994). Judges and people's assessors are independent in their administration of justice in criminal matters, being subservient to the law alone.

15. Judges and people's assessors deal with criminal matters on the basis of the law, working in conditions that exclude extraneous influence on the courts (art. 18 of the Code of Criminal Procedure).

Articles 2 and 3

16. Neither the law nor practice has changed as regards these provisions. Ukraine is in compliance with these articles.

Article 4

17. The Act of 11 July 1995 amending and amplifying certain Ukrainian legislation as regards the responsibility of officials introduced changes in articles 165, 166 and 167 of the Penal Code, increasing criminal liability for abuse of authority. Article 166 makes it a criminal offence to act in excess of one's authority or official powers. The deliberate performance by an official of an action manifestly exceeding the rights and authority extended to him by law is punishable, if actual harm is caused to State or public

interests or to the legally protected interests of individual persons or bodies corporate, by two to five years' imprisonment.

18. Exceeding one's authority or official powers, if accompanied by violence, the use of a weapon, or actions painful or demeaning to the victim, is punishable by three to eight years' imprisonment.

19. Officials whose actions engender serious consequences are liable to 5 to 12 years' imprisonment.

20. Between 1993 and 1995 the Ministry of Internal Affairs received:

- 125 complaints of illegal detention, arrest or search involving the use of physical force (29 in 1993, 56 in 1994, 34 in 1995);

- 142 complaints of rudeness to citizens (84 in 1993, 24 in 1994, 34 in 1995);

- 2,800 complaints of other improper conduct (834 in 1993, 873 in 1994, 1,093 in 1995).

21. Over the same period, 475 employees of internal affairs organs were found guilty of abuse of authority (107 in 1993, 138 in 1994, 230 in 1995). Of these, 226 were convicted of overstepping their authority or abusing their official position (figures on employees of internal affairs organs supplied by the Ministry of Internal Affairs).

22. One hundred and thirty-three people were convicted in 1995 under Article 166, paragraph 2, of the Ukrainian Penal Code, which makes it an offence to act in excess of one's authority or official powers if this is accompanied by violence, the use of a weapon or by actions painful or demeaning to the victim. Thirty-three of them were sent to prison; 27 were put on probation; 48 were given suspended sentences; 1 was sentenced to corrective labour; and 3 were given fines. The courts stripped 14 of the right to hold particular positions. It is not possible to put a number on the criminal cases involved, since court statistics are kept not on cases but on individuals (figures from the Public Prosecutor's Office).

Article 5

23. Neither the law nor practice has changed as regards these provisions. Ukraine is in compliance with these articles.

Article 6

24. The Supreme Council of Ukraine passed the Act on the Legal Status of Foreigners on 4 February 1994. The Act states: "Foreigners shall be entitled to apply to the courts and other State bodies for protection of their personal, property and other rights. In judicial proceedings foreigners, as parties to a case, shall enjoy the same procedural rights as Ukrainian citizens."

25. Article 33 of the Act says that if an international treaty to which Ukraine is party lays down rules other than those established in the Act, the rules laid down in the international treaty will apply.

Article 7

26. Article 6 of the Judicial System Act establishes the right of Ukrainian citizens to legal protection from attacks upon their honour and dignity, lives, health, personal liberty and property.

27. The Act of 23 December 1993 amending and amplifying various articles of the Code of Criminal Procedure regarding the rights to defence of suspects, accused persons and persons on trial introduced changes into article 44 of the Code, which states that defence counsel is allowed to become involved in a case from the moment that charges are laid or, if a suspect is detained or subjected to preventive confinement under guard, from the moment the detention or confinement order is served, but not later than 24 hours after detention occurs.

28. As of 1 January 1996, the following European conventions came into effect in Ukraine:

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (1964)

European Convention on the Transfer of Proceedings in Criminal Matters (1972)

Convention on the Transfer of Sentenced Persons (1983).

29. On 22 September 1995 the Supreme Council passed acts of accession by Ukraine to the following conventions:

European Convention on Extradition (1957)

European Convention on Mutual Assistance in Criminal Matters (1959)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).

30. Ukraine signed a Commonwealth of Independent States convention concerning legal assistance and legal relations in civil, family and criminal matters on 22 January 1993.

31. As this report was being compiled, Ukraine had signed agreements on legal assistance in criminal and civil matters with the Republic of Latvia, the Republic of Estonia, the Republic of Lithuania, Poland, the People's Republic of China, Mongolia, Georgia and the Republic of Moldova.

32. A treaty with Canada on reciprocal assistance in criminal matters has been finalized. Preparations are in train for the ratification of the conventions to which Ukraine acceded in September 1995.

33. Treaties with many countries on legal assistance in criminal matters are in preparation.

Article 10

34. Article 5 of the Act on the Security Service of Ukraine, passed on 25 March 1992, defines the activities of the Service in relation to human rights: in performing its functions, the Service must uphold human rights and freedoms. Security organs and personnel must respect the dignity of the individual and treat people humanely. In exceptional circumstances certain personal rights and freedoms may be temporarily restricted, in the manner and within the limits laid down in the Ukrainian Constitution and laws, with a view to preventing and uncovering State offences. Unlawful restrictions on people's legitimate rights and freedoms are inadmissible and punishable under the law. If in the course of their duties the personnel of a security organ violate people's human rights or freedoms, the organ must take steps to reinstate those rights or freedoms, make redress for the moral and material injury caused, and call those responsible to account. The Security Service is required to explain to people in writing, within a month, why their rights and freedoms have been restricted, and the people concerned are entitled to lodge a complaint with the courts against unlawful actions by Security Service officials (employees) and organs.

35. There is an institute in Kiev and Internal Affairs colleges in Chernigov and Dneprodzerzhinsk that train, retrain and provide refresher courses for the staff of the penal correction system.

Article 11

36. The Act of 30 June 1993 amending the Code of Criminal Procedure states that the investigation of a minor offence is to be completed within a period of not more than 10 days following the identification of the culprit. The investigation of a serious offence is to be carried out within a period of not more than 10 days from the opening of the case. An Act of 23 December 1993 adds to the Code of Criminal Procedure a new section under article 143, stating that during interrogation of an accused person, defence counsel may be present if the accused person so desires; in the circumstances specified in the third section of article 46 of the Code, the presence of defence counsel is obligatory.

37. Under the Act of 23 December 1993, additions have been made to articles 21 and 43 of the Code of Criminal Procedure as regards the rights to defence of suspects, accused persons and persons on trial. Article 21 now stipulates that the person conducting a judicial examination, an investigator, a Public Prosecutor, a judge or a court must, before beginning to interrogate a suspect, accused person or person on trial, explain to him that he is entitled to defence counsel, and make an official record to that effect. Article 43-1 establishes the right of an accused person to have defence counsel, to meet his counsel before the first interrogation, and to ask the Public Prosecutor's Office to verify that his detention is lawful. Moreover, an Act of 15 December 1992 established the institution of court appeals against, and judicial verification of the legitimacy of and grounds for, arrest as a preventive measure.

38. Article 236-3 of the Code of Criminal Procedure states that an individual arrested, or his defence counsel or legal representative, may lodge an appeal against the Public Prosecutor's Office's approval of the arrest with the district (municipal) court of the neighbourhood where the particular branch of the Office is situated. Some activities have been decriminalized, leading to the repeal of 34 articles from the Penal Code: those repealed include articles 61 (sabotage), 64 (organizational activities with a view to committing particularly dangerous State crimes, and membership of an anti-Soviet organization), 65 (particularly dangerous State crimes committed against another workers' State), 74 (evasion of military service or taxes in wartime), 80-1 (failure to report a State crime), 80-2 (concealment of State crimes) and 92 (crimes against the State or public property of other socialist States).

39. By virtue of the Act amplifying and amending the Ukrainian Penal Code, Code of Criminal Procedure and Administrative Infractions Code and the Order dated 7 July 1992 by the Supreme Council governing its introduction and application, people convicted under articles 85, 87-1, 87-2, 146, 147-1, 149 section 1, 150, 151, 152, 154 section 4, 151-1, 154-4, 156, 195, 195-1, 196, 197, 214 and 224-1 of the Ukrainian Penal Code were released from serving sentence since their offences had been abolished. Sentences under articles 81, 82, 84, 86, 86-1, 149 sections 2 and 4, 155-6 sections 2 and 3, 168 and 215 section 1 of the Penal Code were revised to take account of the fact that the penalties applicable had been alleviated.

40. Article 15 of the Penal Code, on essential protection, has been clarified and sets forth the right of every individual to such protection.

41. A new article 46-2 has been added to the Penal Code, providing for execution of sentence to be postponed in the case of pregnant women and women with children under three; a new article 408-3 has been added to the Code of Criminal Procedure, governing the procedure for postponing and annulling postponement of execution in such cases.

42. In the light of the Declaration of State Sovereignty, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Universal Declaration of Human Rights and other international regulatory instruments, Government Order No. 88 of 11 July 1991, "The basic direction of reform in the penal correction system," sets forth a thoroughly-grounded scheme of reforms in the penal correction system, calling for improvements to existing penal-correctional legislation and the formulation and passage of new laws on the subject; the subsequent expansion and reinforcement of premises and facilities at places of detention; the design and adoption of entirely new forms and methods of educational and correctional work with convicts; and the provision of staff to carry out the reforms.

43. The majority of articles in the Penal Correction Code have been amended and amplified, mostly with the effect of making the conditions of confinement for convicts more humane, regulating convicts' legal standing more precisely, safeguarding their rights and abolishing excessive restrictions. The Code now contains a new chapter on the staff (qualifications, responsibilities) of correctional institutions. On a suggestion from the Ministry of Internal Affairs, supported by the General Public Prosecutor's Office, the Supreme

49. A new penal correction code has been drafted. It was designed with the stipulations of the European Convention on Human Rights, the European Prison Regulations (1987), the Standard Minimum Rules for the Treatment of Prisoners (adopted by the United Nations in 1984) and other international agreements in mind. The requirements of the Convention against Torture are taken into account in article 9, "Basic rights of convicts", the second paragraph of which states that convicts are entitled to humane treatment and to respect for their dignity and individuality; they must not be subjected to cruel or degrading treatment.

50. An Order by the Ukrainian Cabinet dated 26 January 1994 approved a programme for bringing into line with international standards the conditions in which convicted prisoners and people in remand centres are held. Cell-space for an additional 4,000 detainees has been allocated under the

programme, and dormitory space for 8,900 convicts has been built or rebuilt. Barrack-type dormitories have begun to be refitted as blocks, as is customary in a number of European countries.

51. Rooms for religious worship have been set up in corrective-labour institutions, and meetings with clergy take place periodically.

52. Special-purpose psychological units have been added to the staff of corrective-labour institutions. These institutions have adopted progressive psychological/adaptive methods of correction and social diagnosis of convicts' personalities.

53. Every month, members of the Public Prosecutor's Office have personal interviews with convicts and people under arrest; the legitimacy of the decisions taken by institution administrators is checked against statements and reports of offences, and the justification for transferring offenders to punishment quarters is verified.

54. The prosecutors are almost entirely occupied with ensuring that administrations uphold without fail the rights and interests that the law guarantees to detainees and making sure that no detainee suffers cruel, inhuman or degrading treatment. Efforts to discover failings and violations are not evaluated on the basis of formal criteria (numbers of checks and demands for corrective action) but by the end result - the extent to which respect for the law and human rights is secured in places of detention by the ways and means available to the Office. Between 1992 and 1995, the Office carried out roughly 18,000 checks on the law-and-order situation in places of detention. On the strength of its findings, 344 people being illegally held in corrective labour institutions were set free and 1,400 were released from unwarranted confinement in punishment cells and quarters; 14,000 protests and other demands for corrective action were issued.

55. Between 1992 and 1995, corrective labour institutions in Ukraine (notably those in Donetsk, Zhitomir, Kiev, Odessa, Kharkiv, Chernigovsk and some other districts) were visited by representatives of various foreign organizations, including the embassies of Germany, the United States and the United Kingdom to Ukraine, and by Council of Europe experts. No violations of human rights were found.

56. Council of Europe experts who have the opportunity to meet arrestees and convicts, detention-centre workers and judges find that Ukrainian legislation on the whole already meets international requirements as regards safeguards of detainees' rights and legal standing.

Article 12

57. Article 4 of the Code of Criminal Procedure states: "Judges, public prosecutors, investigators and examining bodies are required, within their spheres of competence, to initiate a criminal case whenever evidence of a crime is discovered and to take all the steps laid down by law to establish when offence have taken place and see that they are punished."

58. Article 100, section 2, of the Code requires investigators and examining bodies to send the Public Prosecutor's Office a copy of their decision within 24 hours of deciding to open or not to open a criminal case.

Article 13

59. Provision has been made in the Code of Criminal Procedure for an appeal to be lodged before the courts against any decision not to open a case or to close a case, and against approval of an arrest by the Public Prosecutor's Office. A procedure for hearing such appeals has been established.

Article 14

60. The Act amplifying and amending the Ukrainian Penal Code, Code of Criminal Procedure and Administrative Infractions Code and the Order dated 7 July 1992 by the Supreme Council governing its introduction and application added a new article 81-1 to the Code of Criminal Procedure making it incumbent upon examining bodies, investigators, public prosecutors and judges to make redress for injuries caused to citizens by their illegal actions.

61. A supplementary article, No. 81-1, was added to the Code of Criminal Procedure on 22 April 1993; it concerns reimbursement of the costs of in-patient treatment for crime victims.

62. Ukrainian citizens are entitled, under the Act on redress for injuries caused to citizens by the illegal actions of investigative and examining bodies, the Public Prosecutor's Office and the courts, to redress for their losses. Redress is made in full, irrespective of the guilt of the officials (investigative and examining bodies, the branch of the Public Prosecutor's Office or the court concerned).

63. As regards rehabilitation, the individual concerned must apply to the branch of the Public Prosecutor's Office or the court that issued the most recent judicial ruling. If he disagrees with a court finding (order), he may lodge an appeal to have it set aside with a higher court.

Article 15

64. Neither the law nor practice has changed in this regard.

Article 16

65. As regards this article, all acts belonging to the category of torture and other cruel, inhuman and degrading treatment and punishment are banned throughout Ukraine. Ukrainian domestic law does lay down procedures for bringing to justice any persons committing such illegal acts.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

MEXICO*

[25 June 1996]

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* The initial report submitted by the Government of Mexico is contained in document CAT/C/5/Add.7; for its consideration by the Committee, see documents CAT/C/SR.16 and 17 and the Official Records of the General Assembly, forty-fourth session, Supplement No. 46 (A/44/46), paras. 170-201. The second periodic report is contained in document CAT/C/17/Add.3; for its consideration by the Committee, see documents CAT/C/SR.130, 131 and Add.2 and the Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44), paras. 208-229.

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INTRODUCTION

1. As a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mexico is submitting its third periodic report for consideration by the Committee against Torture, in conformity with the provisions of article 19 of the Convention and with the Committee's general guidelines for the submission of reports.

2. Article 133 of the Constitution of the United States of Mexico provides that international treaties concluded by the President of the Republic, with the approval of the Senate, shall, together with the Constitution itself and the laws of the Federal Congress, constitute the supreme law of the entire nation; in view of this provision, the Convention forms part of national legislation and can represent a basis and foundation for any legal action.

3. In conformity with the principles enshrined in the Constitution, the Mexican State shares the responsibility and concern of the community of nations to protect and oversee the fundamental rights of the human being, and has accordingly signed and ratified various instruments of world and regional scope in this area.

4. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is consistent with our Constitution. When it acceded to the Convention, Mexico reaffirmed that the rights recognized in the Convention were in force in the country and thus helped to extend their universal validity, making a clear commitment to this end before the community of nations.

5. In its initial report, its second periodic report and its additional report of May 1996 the Government of Mexico gave a detailed description of the constitutional provisions and specific national laws that guarantee respect for the human rights of all individuals in its territory and under its jurisdiction, with no distinction whatsoever.

6. The second periodic report of the Government of Mexico, covering the period up to June 1992, drew attention to the establishment of the National Human Rights Commission (CNDH) by decree dated 6 June 1990 and the adoption in December 1991 of a new Federal Act to Prevent and Punish Torture.

7. The additional report submitted in May 1996 contains material supplied by various bodies covering the period from May 1992 to December 1995 and relating particularly to the activities of the National Human Rights Commission, the Office of the Attorney-General of the Republic and the implementation of the Federal Act to Prevent and Punish Torture.

8. During the period covered by the additional report, human rights commissions were established in all the legislatures of the Republic, in pursuance of the decree of 28 January 1992, which added a paragraph (b) to article 102 of the Constitution, empowering federal and State congresses to establish bodies for the protection of human rights, with constitutional status, in their respective areas of competence.

9. When the second periodic report of the Government of Mexico was submitted to the Committee against Torture, all complaints of torture were dealt with by the National Human Rights Commission. Currently, when complaints of torture involve federal authorities, they are dealt with by the National Commission, and when they involve State authorities they are dealt with in the first instance by the State commissions. Notwithstanding, the National Commission may exercise its power to consider them.

10. Mexico has participated with determination and enthusiasm in the great wave of internationalization of the protection of human rights by means of declarations, covenants, conventions and judicial commissions and bodies designed to improve this protection and make it more effective. In this framework, on 23 January 1986 the Government of Mexico signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which became effective in Mexico from 26 June 1987.

11. Mexico's libertarian calling is the basis for the defence of human rights of Mexicans within the country and abroad. In Mexico, with our spirit of civilized coexistence, the absence of general, public and effective respect for human rights is inconceivable. The protection of those rights is not a concession to society, but the primary obligation of the Government towards the population.

12. The Government of Mexico recognizes the need for strict compliance with the rule of law and unreserved respect for the human rights laid down in the Mexican Constitution. The chapter on individual guarantees and social rights in our Constitution does honour to Mexican constitutionalism and to the most modern conception of universal law.

13. The Government of Mexico has supplied general information about the country, which may be found in the basic document HRI/CORE/1/Add.12/Rev.2.

ANALYSIS OF ARTICLES

Article 2

Legislative, administrative and judicial measures adopted by the Government of Mexico pursuant to the provisions of the Convention

14. According to the Federal Act to Prevent and Punish Torture, the offence of torture occurs when a public official inflicts severe pain or suffering on a person; by that simple fact, irrespective of the result or consequences of the action, he is liable to the penalty prescribed for that offence. This means that, when a public official commits torture, generally physical, he may, in addition to that offence, also have committed others, such as threats, injuries or causing death, and when that happens it is known legally as a combination of offences.

15. In practice, article 64 of the Federal Penal Code and article 25 of the Penal Code for the Federal District provide that, for this category of offence, "the penalty for the most serious offence shall be applied, and may be increased to up to one half more than the maximum length of sentence, provided that it does not exceed the maximum penalty, which is 50 years' imprisonment".

16. This means that public servants who have committed the offence of torture may be tried and punished in accordance with the above-mentioned rules not solely for torture, but also for causing serious injuries or for homicide.

17. During the period covered by this report, amendments to a number of enactments were introduced and subsequently incorporated into federal law in January 1994, with the result that the Federal Government assumed direct responsibility for the reparation of damage caused by the wilful misconduct of public servants, including moral damage.

18. With regard to the national law applicable to restitution, compensation and rehabilitation for victims of grave violations of human rights, on 10 January 1994 amendments to the following ordinances were published in the Diario Oficial de la Federación (annex I):

Penal Code for the Federal District in respect of Ordinary Law and for the entire Republic in respect of Federal Law;

Federal and Federal District Codes of Penal Procedure;

Amparo Act;

International Extradition Act;

Civil Code for the Federal District in respect of Ordinary Law and for the entire Republic in respect of Federal Law;

Federal Act on the Responsibilities of Public Servants;

Tribunal Fiscal of the Federation Organization Act;

Federal District Administrative Court Act;

Federal Act to Prevent and Punish Torture;

Federal Budget, Accounts and Public Expenditure Act;

Judiciary of the Federation Organization Act.

19. These amendments, which are concerned with the reparation of damage resulting from the commission of offences, state that such reparation includes compensation for material and moral damage, including payment for any remedial treatment necessitated by the offence for the restoration of the victim's health.

20. It has also been established that the State must accept liability in solidum for damage resulting from wilful misconduct of public servants in the performance of their duties, and secondary liability in the event of a culpable wrong; a specific line in the State public expenditure budget has been provided for this purpose.

21. Furthermore, where the damage is caused by acts not deemed to constitute offences under the Civil Code, the State is made liable for the reparation of

damage caused by public servants in the performance of their duties. As a general rule, State liability is secondary, except in the case of wilful misconduct, where it is in solidum. In this regard, State liability arises only in cases where the public servant who is directly responsible does not have sufficient means to cover his own liability.

22. With respect to administrative liability, the procedure for obtaining reparation for damage has been streamlined, in terms of both time-limits and formalities. Prior to the amendment the amount of time required, and the excessive bureaucratic formalities, made it virtually impossible to secure reparation. In addition, judicial procedures have been established to make reparation effective in cases where the public servant refuses to comply.

23. The reform establishing the liability of the State and regulating the means of exercising recognized rights, which is even more important, has a preventive aspect with regard to torture. When the authorities are obliged to provide reparation for damages, as the National Human Rights Commission pointed out in recent recommendations, such as recommendation 98/95 (annex II), they become more aware of the need to introduce efficient monitoring machinery so that public servants under their authority observe the law in performing their duties, and there is also a greater incentive to provide staff training in human rights.

24. The above-mentioned recommendation 98/95 concerns the disturbances of 3-4 May 1995 at the Guadalajara Social Rehabilitation Centre, when State and federal police beat and mistreated inmates, taking seven lives; it was sent to the Governor of the State of Jalisco and the Attorney-General of the Republic.

25. Article 27 of the Federal Code of Penal Procedure states that a confession is "a voluntary declaration made by a person not under 18 years of age in full possession of his mental faculties, before the Public Prosecutor, or the judge or court trying the case, concerning acts of his own commission constituting the type of offence with which he is charged, issued subject to the formalities indicated in article 20 of the Constitution of the United Mexican States; it shall be admissible at any stage of the proceedings, until such time as irrevocable sentence is pronounced".

26. For an accused person's confession to have probative value it must be made to the Public Prosecutor's Office or to the judge and, in addition, the rest of the requirements laid down in article 287 of the said Code must be met, namely:

> "I. That it be made by a person not under 18 years of age, against himself, in full awareness, subject neither to coercion nor to physical or moral violence;
>
> II. That it be made to the Public Prosecutor's Office or the court trying the case, in the presence of the accused person's defence counsel or confidant, and that the accused be duly informed of the procedure and process;
>
> III. That it concern an act of his own commission;

IV. That there are no circumstances which, in the opinion of the judge or court, make it implausible."

27. The Code also provides that a person may not be held for trial when the sole incriminating evidence is his confession and - a very important point - that the judicial police is empowered only to submit reports but not to obtain confessions, which, were it to do so, would lack any probative value, as expressly stated in article 287.

28. To this effect, the final paragraph of the article mentioned, recently amended by the Decree published in the Diario Oficial de la Federación for 10 January 1984, accords the value only of testimony to the findings of inquiries conducted by officers of the federal or local judicial police, the said testimony requiring, in order to be taken into account in the committal order, to be supplemented by other evidence resulting from inquiries conducted by the Public Prosecutor's Office; but in no event may the former findings be taken as a confession. It is also stated that the courts have a duty to set forth in their decisions the arguments they took into account in legally assessing the evidence (art. 290).

29. Finally, with regard to the 1991 reforms to the Federal Code of Penal Procedure, article 127 bis establishes the right of every person to be assisted by a freely chosen counsel at the time of making his statement. The counsel then has the right to challenge any questions put to the deponent if they are irrelevant or unfair, but may not produce or induce his client's replies.

30. The reforms introduced in the Code of Penal Procedure for the Federal District are similar in content and scope to those made to the Federal Code, but it should be noted that the third and fourth paragraphs of article 134 bis, amended on 10 February 1994, make it a duty for the Public Prosecutor's Office to ensure that a person suspected of committing an offence is not held incommunicado, intimidated or tortured and, furthermore, provide that suspects may, from the start of the preliminary investigation, appoint a counsel or confidant to take charge of their defence, failing which it is for the Attorney-General's Office to assign counsel.

31. These legislative reforms have been accompanied by an appreciable change in Mexican judicial practice, as can be seen from the jurisprudential rulings of the Supreme Court of Justice of the Nation and the Collegiate Circuit Courts, which are in keeping with those reforms.

Office of the Attorney-General of the Republic

32. The Office of the Attorney-General of the Republic, in applying article 2 of the Convention - which requires the States parties to take legislative, administrative, judicial or other measures to prevent acts of torture - has always endeavoured to ensure that public servants comply with the obligations under the procedural statute and with the commitments under the Convention and other international instruments, such as the Inter-American Convention to Prevent and Punish Torture.

33. Between June 1992 and December 1995, the Office of the Attorney-General of the Republic published the following legal ordinances, which regulate the conduct of public servants in that office in defending human rights and combating impunity:

Code of Professional Ethics for Federal Agents of the Public Prosecutor's Department and the Judicial Police, published on 24 March 1993;

Regulations of the Federal Judicial Police Career, published on the same date;

Circular 010/93 of 6 April 1993, issued by the Attorney-General of the Republic establishing the Unit for follow-up of recommendations of the National Human Rights Commission. Its purpose is to respond to the requirements of the Commission, especially concerning complaints about the conduct of preliminary investigations where a particular offence is presumed to have been committed, as would be the case for torture and other serious unlawful acts;

Institutional Code of Conduct and Ethics, adopted in 1995 (annex III);

Definition of the mandate of the Office of the Attorney-General of the Republic, adopted in September 1995:

"The Office of the Attorney-General of the Republic, which includes the Public Prosecutor's Department, is an essential organ of the federal justice system. On behalf of individuals, society and the State it promotes and monitors compliance with the Constitution and ensures that justice is done within its areas of competence. It also participates in crime prevention activities to guarantee public safety;

This mandate must be exercised in strict compliance with the principles of the Constitution and the relevant legislation, and also in full observance of human rights, as prerequisites for the rule of law;

The activities of the Federal Public Prosecutor's Department and its subsidiary offices shall be oriented towards, and governed by, the principles of honesty, professionalism, impartiality, loyalty and efficiency, always with good faith and humanity."

Circular No. 001/95 of 10 March 1995. This provides that all communications which any public servant of the Office of the Attorney-General of the Republic requires to have with the National Human Rights Commission must be effected through the Internal Control Unit, which would be the only point of contact for communication with and proceedings before that body.

Directorate-General of Human Rights Protection

34. The year 1993 saw the creation of the Directorate-General of Human Rights Protection, which forms part of the internal structure of the Office of the Attorney-General of the Republic and performs specific functions provided for in article 29 of the implementing regulations of its Organization Act, namely monitoring, protection and promotion of human rights and dissemination of the values that must underpin the conduct of public servants responsible for seeing justice done so as to obviate, through preventive action, the commission of offences such as torture.

National Human Rights Commission

35. While for reasons of competence it is now the local commissions which first hear complaints of torture committed by State authorities, the National Human Rights Commission has the power to review in second instance, in addition to which it may exercise its power to examine in matters of particular gravity, which exceed the scope of the State bodies.

36. It is important to note that in federal cases, including those of torture, there is no time-limit for lodging complaints, which reinforces the systematic drive to combat impunity and ensures that no act of torture remains unreported owing simply to the passage of time. In this connection it is noteworthy that the National Human Rights Commission Organization Act sets a precedent for the imprescriptibility of the submission of complaints, and defines torture as a crime against humanity.

37. Also worthy of mention is the publication on 22 November 1994, in the Diario Oficial de la Federación, of the General Regulations for Military Prisons (annex IV).

Article 3

Legislative or other measures to prohibit the expulsion, return or extradition of a person to another State where he would be in danger of being subjected to torture

38. The determination displayed by the Mexican State in rejecting torture has been steadfast at the domestic and international levels alike.

39. At the domestic level, article 22 of the Constitution of the United States of Mexico prohibits punishments by mutilation and infamy, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or overwhelming penalties.

40. Secondly, article 15 of the Constitution lays down that no treaty may be authorized for the extradition of political prisoners or of common offenders who have been slaves in the country where they committed the offence; and that no agreement or treaty shall be entered into which restricts or modifies the guarantees and rights which the Constitution grants to the individual and to the citizen.

41. The aforementioned article is in accord with article 3 of the Convention. Similarly, articles 8 and 9 of the International Extradition Act provide that extradition shall under no circumstances be granted in the case of persons who may be subjected to political persecution by the requesting State, or when the wanted person has been a slave in the country where the offence was committed, or if the offence for which his extradition is demanded comes within the jurisdiction of the military courts.

42. Article 10 of the same Act provides that the Mexican State shall insist, as a condition for considering the application, upon the requesting State's undertaking, inter alia, that if the offence with which the wanted person is charged is punishable under its legislation by death or any of the other penalties specified in article 22 of the Constitution, sentence only of imprisonment or such other less severe penalty as that country's legislation prescribes for the case shall be passed, either directly or by substitution or commutation.

43. With regard to expulsion, article 42, section VI of the General Population Act provides that a refugee may not be returned to his country of origin, nor sent to any other where his life, liberty or safety will be threatened, which is also in accord with article 3 of the Convention.

Rules for evaluation of risk and policy of the Government of Mexico as to the granting of refugee status

44. Article 89 of the implementing Regulations of the General Population Act lays down the following rules to govern the admission of non-immigrants/refugees:

> "I. Aliens arriving on Mexican territory who are fleeing from their countries of origin to protect their lives, safety or freedom under threat from generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have gravely perturbed public order shall be provisionally admitted by the migration offices, provided that they stay at the port of entry while the Ministry decides each case. The migration office concerned shall inform headquarters of this situation through the quickest channels. The latter shall determine the action to be taken in each specific case.
>
> II. The person concerned, in requesting asylum, must indicate the reasons for his having fled his country of origin, his personal particulars, the data necessary for his identification, and the means of transport that he used.
>
> III. Once the authorization has been granted by headquarters, the necessary measures will be taken for the refugee's safety and for his transfer to the place assigned for his residence, which shall be specified in the authorization itself.
>
> IV. Admission as a refugee shall not be granted to an alien coming from a country other than the one in which his life, safety or freedom were threatened, except where it can be shown that he was not accepted

in the country from which he is coming or that in that country he is still exposed to the danger that forced him to flee from his country of origin.

V. All aliens admitted to the country as refugees shall remain subject to the following conditions:

(a) The Ministry shall determine the place where the refugee must reside and the activities in which he may engage, and may establish other conditions to regulate his stay when in its view the circumstances so warrant.

(b) Refugees may request the admission to Mexico of their spouses and minor or handicapped children, to live as their economic dependants, and these may be granted the same migrant status, which may also be accorded to the refugee's parents if deemed desirable.

(c) Aliens admitted as refugees may go abroad only with prior permission from headquarters; should they do so without such permission, or remain outside the country for longer than the authorized time, they shall lose their migrant rights.

(d) A refugee may not be returned to his country of origin, nor sent to any other where his life, freedom or safety will be threatened.

(e) The Ministry may exempt an alien to whom such migrant status is accorded from any penalty he may have incurred by illegally entering the country.

(f) The authorizations referred to in this article shall be granted for such time as the Ministry deems fitting. Temporary residence permits are granted for one year and, should this period need to be exceeded, may be further extended one year at a time. To this end, those concerned must apply for revalidation of their permit within the 30 days prior to its expiry. Such revalidation will be accorded if the circumstances that prompted the refugee to seek asylum persist and provided that the requirements and conditions indicated by the Ministry have been complied with. The same procedure shall apply to relatives.

(g) A permit shall be required for any change of abode or any extension or change of activities, subject to the requirements indicated by the Ministry.

(h) Temporary residence in the country with the status of refugee shall not generate any rights of permanent residence.

(i) When in the opinion of the Ministry the circumstances that prompted the person concerned to seek asylum no longer obtain, he must leave the country, together with any members of his family who have the same migrant status, within the next 30 days, or alternatively may avail himself of the provisions of article 59 of the Act.

(j) Refugees are required to declare any changes in their civil status, as also the birth of children in Mexican territory, within a maximum period of 30 days from the date of the change, performance of the ceremony, or marriage."

Authority that decides upon extradition, expulsion or return, and possibility of challenging the decision

45. In pursuance of article 6, section XIV of the Internal Rules of the Ministry for Foreign Affairs, it is the responsibility of the Minister to ratify by his signature the decisions referred to in articles 19, 20, 21 and 30 of the International Extradition Act.

46. Article 16, section IV of the same rules assigns to the Directorate-General of Legal Affairs of the Ministry for Foreign Affairs responsibility for taking action in extradition proceedings in accordance with the provisions of the International Extradition Act and of any agreements concluded between Mexico and other States.

47. With regard to expulsion, it is the responsibility of the Coordination Office for Legal Matters and Immigration Control of the National Institute of Migration of the Ministry of the Interior to put it into effect in accordance with the provisions of article 10, section 1 of the Decree establishing the National Institute of Migration as a decentralized technical body attached to the Ministry of the Interior.

48. In the case of extradition, the second paragraph of article 33 of the International Extradition Act provides that a decision granting extradition can be challenged only through an action for amparo. As regards expulsion, it is considered that an expulsion order can also be challenged through the same means of legal defence, i.e. an action for amparo.

Special training for assessing the probability that a person will be tortured in case of expulsion or whether he has already been tortured in his country of origin

49. Personnel dealing with migration need general preparation for their work through training and personal improvement courses and programmes. With regard to determining whether a person has been or may be subjected to torture, it is essential to have medical and psychological personnel who are trained to deal with such cases and who must report to the migration authorities the results of any examinations they perform.

50. It is also desirable that the National Human Rights Commission be represented at migration posts to ensure respect for the physical and moral integrity of aliens and to promote preventive behaviour conducive to protection of the physical integrity of individuals at the national and international levels, as also to draw attention to the penalties to which persons who carry out acts of torture are liable.

51. Expulsions made effective in the year 1995:

January	9 943
February	9 155
March	10 527
April	8 498
May	9 217
June	9 593
July	8 533
August	8 048
September	8 797
October	8 637
November	7 941
December	6 174
Total	105 063

52. Aliens who expressed fear of returning to their countries of origin, and therefore requested interviews with the United Nations High Commissioner for Refugees, during 1995:

Name	Nationality
Orlando Bernal Ruiz	Cuban
Afeadz Ahfaz Arfhad	Pakistani
Udoka Okechu Kwu	Nigerian
Remon Abukhaber	Jordanian
Roda Ali Hussein	Somalian
Hibo Mourid	Somalian
Amadu Osman	Liberian
Joseph Sarpong	Liberian
Abmad Aftab	Pakistani
Hallak Samul Sarein	Iraqi
Luis Manuel Espinoza Betancourt	Cuban
Wilfredo Prendes	Cuban
David Carter	Nigerian
Ryan Smith	Nigerian
Mohiuddin Choudaury	Bangladesh
Reza Sistar	Iranian
Diana Angie	Sierra Leonean
Joseph Williams	Liberian
Rosa Galan Chica	Salvadoran
Joseph Williams Qdob	Liberian

Article 4

Number of cases in which the Federal Law to Prevent and Punish Torture has been applied to public servants for the offence of torture or homicide as a consequence of torture

53. The decline in cases of torture has been a priority in the work of the CNDH. For the past six years, and particularly since the presentation of Mexico's initial report, significant progress has been made in terms of the penalties applied for the offence of torture.

54. The following table shows the changes that have occurred in the number of complaints of torture, according to the records of the National Commission.

Semester or 12-month period	Total No. of complaints received	Complaints of torture
First semester June-December 1990	1 343	180
Second semester December 1990-June 1991	1 913	266
Third semester June-December 1991	2 485	156
Fourth semester December 1991-May 1992	4 503	134
12-month period May 1992-May 1993	8 793	246
12-month period May 1993-May 1994	8 804	141
12-month period May 1994-May 1995	8 912	45
12-month period May 1995-May 1996	8 357	59

55. From these figures, especially those of the last 12-month period, it may be noted that, of the 59 complaints of torture received, only 43 were deemed admissible for follow-up by the National Commission. The remaining cases were sent to the State Commissions for referral to public officials under ordinary jurisdiction and were considered to be cases of incompetence, where either the alleged acts of torture had already been assessed by the courts, or the plaintiff had abandoned his action before the National Commission or had lost interest in pursuing the proceedings.

56. It should also be noted that, in the 43 cases mentioned above, 16 of the acts occurred during 1996, 23 in 1995, and the rest in previous years. Since 1992, a total of 37 preliminary investigations for the offence of torture have been conducted:

Year	Total number accused
1992	18
1993	8
1994	0
1995	10

57. The General Directorate for Follow-up of the CNDH Recommendations has presented 31 preliminary investigations into the possible offence of torture to district judges:

Year	Total number accused
1992	28
1993	0
1994	3
1995	0

58. The National Commission is aware of legal action having been brought against 53 public servants for the offence of torture, and against 14 for homicide arising from torture. In two cases, the trial judge pronounced a verdict of guilty of torture and in five cases a verdict of homicide as a consequence of torture. These cases are the following:

(a) Criminal proceedings for the offence of torture

(i) In recommendation 73/91, in the case of Martín Arroyo Luna et al., criminal action was brought against Gustavo Castrejón Aguilar (annex V);

(ii) In recommendation 42/92, in the case of Mr. William Darío Kerguelen Pinilla, criminal action was brought against Mario Santander Embriz (annex VI);

(b) Criminal proceedings for the offence of homicide as a consequence of torture

(i) In recommendation 3/90, in the case of Mr. Jorge ..rgáez Pérez, criminal action was brought against Alejandro San Pedro González (annex VII);

(ii) In recommendation 29/90, in the case of the People of Aguililla, Michoacán, criminal action was brought against Raymundo Gutiérrez Jiménez (annex VIII);

(iii) In recommendation 1/91, in the case of Pedro and Felipe de Jesús Yescas Martínez, criminal action was brought against Omar Olguín Alpízar (annex IX);

(iv) In recommendation 15/91, in the case of Ricardo López Juárez, criminal action was brought against Enrique Alvarez Palacios (annex X);

(v) In recommendation 50/91, in the case of José del Carmen Llergo Totosaus, criminal action was brought against José Rojas Garrido (annex XI).

59. Furthermore, in 7 cases the jurisdictional proceedings reached no conclusions; in 13 cases, the respective arrest orders were not carried out; and 25 arrest orders were rejected or cancelled by judges and a formal arrest warrant revoked.

60. Of the 1,022 recommendations issued by the CNDH from its establishment until December 1995, torture was proven in 105 recommendations, and on those occasions the illegal action of the offending public servants was publicly disclosed along with their names; it was also recommended that the appropriate administrative and criminal proceedings should be initiated. Those recommendations were based not only on national legislation but also on the covenants and treaties ratified by the Government, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

61. Of the 105 recommendations in which torture was proven, 72 are noteworthy for having been fully implemented; 32, partially implemented; 2 remain pending, as they were issued recently, and only 1 was not accepted by the Chief Justice of the Supreme Court of Justice of the State of Sinaloa.

62. The General Directorate for Follow-up of the CNDH Recommendations, part of the Office of the Attorney-General of the Republic, reported the following data for the period 1992 to the present, based on recommendations of the Commission:

recommendations registered	15
arrest warrants:	
requested	50
issued	33
assent pending	-
execution pending	10
rejected	17
cancelled	6
executed	17
suspended	10
arrest warrants:	
rejected and confirmed	17
rejected and not appealed	-
rejected pending decision on appeal	-
cancelled due to death	2

cancelled due to prescription	-
cancelled due to amparo	4
detention order revoked	2
release orders	3
investigation	-
rearrests	1
awaiting conclusion	-
awaiting sentence	-
judgements	11
TOTAL	50
convictions	8
acquittals	3

63. On the basis of these preliminary investigations and trials, the following public servants have been held for torture:

1	Former State delegate
2	Agents of the Federal Public Prosecutor's Office
6	Federal Judicial Police commanders
3	Group chiefs of the Federal Judicial Police
1	Preventive Police officer assigned to the Federal Judicial Police
3	Administrators
34	Federal Judicial Police officers
50	Total

Article 5

Jurisdiction of the relevant laws

64. There are several provisions in Mexico that deal with torture, such as the Federal Act to Prevent and Punish Torture, as mentioned in the Government's initial report; article 3 of that Act provides as follows:

> "The offence of torture is committed by a public official who, by virtue of his office, inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining from him or a third person information or a confession or punishing him for an act he has committed or is suspected of having committed, or coercing him into acting or refraining from acting in a particular manner."

65. This law applies to any public servant of the Federation or the Federal District who employs these illegal methods of torture, whether directly or through third parties. The States and Federal District also have laws for combating and punishing torture within State and local territory.

66. Other national laws deal with degrading treatment and grave torture of persons, including the Penal Code and the Federal Act on the Responsibilities of Public Servants.

67. The last paragraph of article 19 of the Constitution, although it does not mention the word "torture", refers to ill treatment and molestation:

> "Any ill treatment during arrest or confinement, any molestation without legal justification and any exaction or contribution levied in prison constitute abuses which shall be punishable by law and repressed by the authorities."

68. More specifically, article 20, paragraph II, of the Constitution stipulates the following with regard to torture:

> "In all criminal proceedings, the accused shall enjoy the following guarantees:
>
> II. He may not be compelled to testify. Any incommunication, intimidation or torture is prohibited and shall be punished by criminal law."

69. More emphatically, article 22 of the Constitution states the following:

> "Punishments by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or overwhelming penalties are prohibited."

Nationality of the author and victim of the offence of torture

70. Regarding the nationality of the author and victim of the offence of torture, article 1 of the Constitution provides the following:

> "In the United States of Mexico every person shall enjoy the guarantees granted by this Constitution, which cannot be restricted nor suspended, except in such cases and under such conditions as are herein provided."

71. By Constitutional mandate, every person, whether a national or an alien, enjoys the protection of his individual rights, which may be neither suspended nor restricted, except in cases expressly provided for by the Constitution. Thus, the victim of the offence of torture, whether a national or an alien, is

entitled to be compensated in accordance with the law or, in case of death, his family is entitled to be compensated for the injury and damages caused by the heinous act of torture. As for the author of the offence of torture, whether Mexican or alien, he must be tried in accordance with due procedures and the applicable laws, and his human rights may not be violated through torture or other degrading forms of treatment.

Article 6

Procedures for guaranteeing the detention of persons suspected of torture during the period necessary to institute criminal or extradition proceedings

72. The international extradition procedure in Mexico is governed by article 119, paragraph 3, of the Constitution, the first part of which provides as follows:

> "Extraditions requested by a foreign State shall be processed by the Federal Executive, subject to the participation of the judicial authority under the terms of this Constitution, the relevant international treaties and regulatory laws. In these cases, the decision of the judge ordering the execution of the request shall suffice to validate the decision for up to sixty calendar days."

From this it is clear that international extraditions must comply with the provisions of the International Extradition Act, if there is no international treaty with the requesting State, and of the relevant international treaties to which Mexico is a party.

International Extradition Act

73. The International Extradition Act came into force on 30 December 1975. Its provisions are public and federal in nature and are intended to decide the cases and conditions under which individuals accused in their courts or convicted there of common offences may be surrendered to requesting States, in the absence of any international treaty.

74. By virtue of the foregoing, any extradition request from a foreign Government must be processed and decided in accordance with the procedures established by this Act.

Requirements

75. According to the Act, individuals may be extradited if criminal proceedings have been instituted in another country against them for a suspected offence, or if they are required to serve a sentence rendered by the judicial authorities of the requesting State. The formal request for extradition, and the supporting documents of the requesting State, must contain the following:

> "I. An indication of the offence for which extradition is requested;

II. Evidence of the offence and the probable guilt of the wanted person. If the individual has already been convicted by the courts of the requesting State, it shall suffice if an authentic copy of the sentence is attached;

III. The documents referred to in article 10, in cases where there is no extradition treaty with the requesting State;

IV. A copy of the text of the law of the requesting State which defines the offence and sets the penalty; the law on the limitation of actions and applicable penalty; and the authorized declaration of the law's validity at the time the offence was committed;

V. The authentic text of the arrest warrant, if any, against the wanted person; and

VI. The personal data and background of the wanted person, facilitating his identification and, where possible, his whereabouts as well."

76. These documents and any others presented which are drafted in a foreign language must be accompanied by a certified translation into Spanish, in accordance with the Federal Code of Penal Procedure.

77. The International Extradition Act refers to another procedure, known as preventive detention for purposes of extradition, which is used exceptionally as part of international extradition proceedings.

78. This procedure comes into play when the requesting State expresses the intention of submitting a formal request for the extradition of a particular person, and requests the adoption of precautionary measures with regard to the latter; this request may be granted only if the request for preventive detention for purposes of extradition made by the requesting State contains an identification of the offence for which the extradition is requested and a statement to the effect that an arrest warrant has been issued against the wanted person by the competent authority.

79. Accordingly, if the Ministry for Foreign Affairs believes there are grounds for doing so, it transmits the request to the Attorney-General of the Republic, who immediately asks the relevant district judge to order the appropriate measures, which may consist, at the request of the Attorney-General, of a restriction order or other measures as appropriate under the relevant treaties or laws.

80. If the formal request for extradition has not been submitted to the Ministry for Foreign Affairs within the two months called for by article 119 of the Constitution, starting from the date on which the measures indicated in the foregoing article are enforced, the measures will immediately be lifted. The judge hearing the case will notify the Ministry for Foreign Affairs at the start of the 60-day period so that the Ministry may bring it to the attention of the requesting State.

81. Once a request has been admitted, the Ministry for Foreign Affairs sends a warrant to the Attorney-General of the Republic, along with the case file, requesting the competent district judge to issue an order for its execution and for the detention of the wanted person, as well as, if necessary, the seizure of any papers, money or other objects found in his possession which are related to the alleged offence or which might constitute evidence, if the requesting State has so asked.

82. Once the wanted person has been detained, he is brought without delay before the respective district judge, who acquaints him with substance of the extradition request and with the documents accompanying the request. At the same hearing he may appoint counsel. If he has none but requests legal assistance, he will be presented with a list of court-appointed counsel to choose from. If he does not appoint one, the judge will do so in his stead. The detainee may ask the judge to defer the proceedings until he agrees to counsel if counsel is not present at the time the appointment is made.

83. Consequently, after due process has been followed in accordance with the International Extradition Act and the Code of Penal Procedure, the Ministry for Foreign Affairs, after considering the file and the opinion of the judge, decides within the next 20 days whether to grant or refuse extradition. If the Ministry grants extradition, it will notify the wanted person and the Ministry of the Interior, and the Government of Mexico will surrender the wanted person, through the Office of the Attorney-General of the Republic, to the authorized representative of the requesting State, at the border or, as appropriate, aboard an aircraft in which the extradited person is to travel.

International treaties

84. The Government of Mexico wishes to state that, in the relevant international treaties signed with other States, the requirements stipulated by common consent for the processing, procedure and decision on any request for extradition must be adhered to.

85. Nevertheless, the Government of Mexico and the co-signatory States, in their international treaties on international extradition, undertake to surrender to each other, subject to the terms of these treaties, any persons in respect of whom the competent authorities of the requesting party have instituted criminal proceedings, who have been found guilty of an offence or who might be required by those authorities to serve a legally imposed prison sentence for an offence committed on the territory of the requesting State.

86. In order to give effect to the extradition, the international conduct of the individual which falls under any of the subparagraphs of the offences covered by the annexes of the international treaty must be punishable under the laws of both States with a maximum prison sentence of not less than one year.

87. Likewise, the Government of Mexico abides by the principle of not handing over for extradition persons required to be tried for military and political offences; or persons who have already been tried, judged and either convicted or acquitted by the requesting party for the same offence on which the request for extradition is based; or when the limitation of criminal

action or the sentence for which extradition is requested has expired; or when the offence for which extradition is requested is punishable by death.

88. It may be pointed out that the extradition procedure in international treaties signed and ratified by Mexico is similar to that followed in the above-mentioned International Extradition Act.

89. Mexico has concluded extradition treaties with the following countries: Australia, Bahamas, Belgium, Belize, Brazil, Canada, Colombia, Cuba, El Salvador, Germany, Guatemala, Italy, Netherlands, Panama, Spain, United Kingdom and United States.

90. At the multilateral level, the Government has ratified the 1933 Convention on Extradition within the framework of the Organization of American States.

Article 7

Criminal procedure applicable to persons committing torture who are not extradited

91. This procedure is regulated by article 4 of the Federal Code of Penal Procedure, the relevant part of which states the following:

> "Offences committed on foreign territory by a Mexican against Mexicans or aliens, or by an alien against a Mexican, shall be punishable in the Republic in conformity with Federal law, provided that the following conditions are met:
>
> I. The accused is physically present in the Republic;
>
> II. The accused has not been definitively tried in the country in which he committed the offence; and
>
> III. The offence of which he is accused is an offence in the country in which it was committed as well as in the Republic."

92. Thus, if the requesting State applies for the extradition of a Mexican national considered guilty of the offence of torture and in conformity with the agreement issued by the Ministry for Foreign Affairs, extradition of the wanted person will be refused, solely on the grounds that he possesses Mexican nationality.

93. Some exceptions are none the less under article 30 of the Constitution, in conformity with article 14 of the International Extradition Act, which states that no Mexican may be turned over to a foreign State save in exceptional cases, at the discretion of the Executive.

94. The Ministry for Foreign Affairs then notifies the detainee and the Attorney-General of the Republic of the agreement, making the case file available to the Attorney-General so that the Public Prosecutor's Office can turn it over to the competent court, if appropriate, following the due process established in article 20 of the Constitution, referred to above.

95. In this way the Government combats impunity in cases where Mexican nationals have committed the offence of torture.

96. In all the international treaties and conventions ratified by Mexico on international extradition, it is stipulated that if the party of whom the request is made does not grant extradition because its domestic laws prevent it from turning its nationals over to foreign States, that party must turn the case file over to its competent authorities for criminal action, so long as the party has the legal jurisdiction to try the offence.

97. It should be noted that there have not been any judgements on this issue within the domestic legal framework, since never in our country's ancient and recent history, has any State submitted either a request to the Government for preventive detention for purposes of extradition or a formal request for extradition on the grounds of the probable commission of the offence of torture. Consequently, Mexican legal authorities have never had occasion to take a stand on the matter.

98. None of the 120 formal extradition requests made by various States to the Government during the period 1994-1996 has involved the offence of torture, despite the fact that torture is defined in the Federal Penal Code and the annexes to all the international extradition treaties ratified by Mexico.

Article 8

99. Laws and regulations governing extradition:

Federal jurisdiction

Constitution of Mexico (arts. 119 and 15);

International treaties and conventions on extradition or legal aid;

Federal Penal Code;

Code of Criminal Procedure;

Code of Civil Procedure;

Federal Act on the Responsibilities of Public Servants;

International Extradition Act;

Office of the Attorney-General of the Republic Organization Act;

Public Administration Organization Act;

Case law of the Second Division of the Supreme Court of Justice.

Ordinary jurisdiction

Penal Code for ordinary law;

Code of Penal Procedure for ordinary law;

Code of Civil Procedure for ordinary law;

Office of the Attorney-General of the Republic Organization Act.

Article 9

National provisions for mutual judicial assistance between States in criminal proceedings in cases of torture

100. The Mexican Government wishes to state that, as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has undertaken to provide all possible assistance in connection with any criminal proceedings for the offences referred to in article 4, including the supply of all evidence at its disposal necessary for the proceedings. The decree promulgating that Convention was issued by the President of the Republic on 12 February 1986 and published in the Diario Oficial de la Federación on 6 March 1986.

101. The Government is fulfilling its international obligations on criminal proceedings for the offence of torture in conformity with the cooperation agreements on mutual judicial assistance it has concluded with the following States: Argentina, Australia, Brazil, Canada, Germany, Spain and United States.

102. At the multilateral level, the Government has ratified or acceded to the following international legal instruments on cooperation and judicial assistance in criminal proceedings on torture: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Inter-American Convention to Prevent and Punish Torture, receipt of evidence abroad, evidence and information from foreign law.

Article 10

Education and information for the prohibition of torture: professional training of civilian and military staff, medical personnel, public officials and others participating in the interrogation, custody or treatment of persons under arrest, detention or imprisonment

103. Article 2 of the Federal Act to Prevent and Punish Torture states that:

"The subsidiary organs of the Federal Executive concerned with the administration of justice shall conduct continuing programmes and establish procedures for:

...

II. The organization of training courses for their staff in order to encourage respect for human rights;

III. The professional training of their police forces;

IV. The professional training of public officials who are involved in the custody and treatment of any person who has been arrested or imprisoned."

104. Thus, the various offices of the Federal Executive, many of them in coordination with the CNDH, have established training programmes for all public servants engaged in the above-mentioned activities, and for medical personnel to enable them to recognize cases of torture and the after-effects of physical or mental torture.

National Human Rights Commission

105. In order to strengthen respect for human rights, the National Commission trains various security services and the armed forces. In the first instance, the training programmes are focused on Federal public servants within the Commission's sphere of competence; however, in matters of prevention and of promotion of a human rights culture, the Commission has also been training municipal and State officials, in coordination with the respective State Commissions, and involving universities and non-governmental organizations.

106. Currently, training programmes are focused on the following personnel responsible for public or national security: police academy students, police officers on preventive and municipal duties, judicial police officers from the States and Public Prosecutor's Departments of ordinary law, guards, immigration officers, federal highway police, and staff assigned to the Office of the Attorney-General of the Republic, including administrators, Federal Judicial Police and officials of the Federal Public Prosecutor's Department.

Police academy

107. An awareness-raising campaign is now under way, aimed at reaching all the police officers of all the State and federal agencies. It began as a pilot programme at the police academy of the State of Aguascalientes, with a training model that makes it possible to include not just human rights, but all related subjects, in the curriculum.

108. For example, restraint techniques involve not only a knowledge of the techniques of subjugation and manoeuvre, both individual and collective, use of firearms and development of physical strength, but also a knowledge of the implications of the use of force in time, technique and proportionality. These techniques must be learned at the same time as other police techniques, and not as a desk course unconnected with reality.

109. Prior to the current programme, the CNDH had prepared a police guide and a manual and primer that were widely disseminated among the police forces.

Municipal police and preventive police

110. The training of preventive and municipal police on active duty has begun in the State of Nayarit, to familiarize officers with the basic concepts of respect for human rights and to teach them the implications of, and restrictions on, their actions.

State judicial police officers

111. During the period covered by this report, training programmes were carried out in conjunction with the State human rights commissions and the offices of the Attorney-General in the States of Hidalgo, Oaxaca, San Luis Potosí, Chihuahua and Tamaulipas, as well as in the Federal District. The same will be done in the States of Veracruz, Yucatán and Quintana Roo. Between May and December 1995, 342 officials of the Public Prosecutor's Department and 693 judicial police officers were trained. This training basically revolves around the use of force and the problem of arbitrary detention, as well as the procedures to be followed by personnel in the performance of their duties.

Guards

112. Guards in the State of Querétaro are being retrained through a course entitled, "How human rights work in the CERESO", which answers such basic questions as "which of my rights has been violated within the CERESO (Social Rehabilitation Centre), and which of the detainees' rights might I someday violate?"; 70 persons have participated to date. This programme will be given strong support, in collaboration with non-governmental organizations and the prisons themselves, dealing with the specific problems of indigenous people and the situation of women detainees. Training courses will also be given in the Islas Marías Federal Penal Settlement.

Immigration officers

113. In the current stage of the training provided for immigration officers, a new programme has developed as a result of the report published by the CNDH in April 1995, Southern border: report on violations of the human rights of immigrants. In the Chiapan cities of Tapachula and Comitán, 102 immigration officers have been trained, out of a total of 230 immigration officers in the States of Chiapas, Veracruz, Tabasco and Oaxaca.

114. In addition to supporting instruction on the findings and suggestions of that report, the training process is aimed at diagnosing the fundamental rights to be safeguarded by these officers in performing their duties and at preparing a handbook for persons without papers in Mexico, to make them aware of their rights and of the civilized treatment to which they are entitled in Mexican territory.

Federal highway police

115. In the State of Nayarit, the federal highway police training programme began with a workshop in which some 800 persons participated and which consisted of an initial awareness-raising session on two subjects, the dignity with which they must be treated as subjects of human rights, and the civilized treatment which must in turn be given to the population as a basic condition for the respect of human rights.

Federal Judicial Police officers

116. An awareness-raising programme has now been completed, in which 1,975 staff members from the Office of the Attorney-General of the Republic throughout the country participated, as follows: 579 federal officers from the Public Prosecutor's Department; 746 Federal Judicial Police officers; and 650 administrative staff.

117. This training was given to staff on active duty, in their respective police stations. The initial awareness-raising stage revolved around three basic rights - the right to life, dignity and liberty - each analysed from two perspectives: that of the public servant as a subject of law, and in his dealings with the population in the course of his duties as a member of the Federal Judicial Police.

118. In each session, an effort was made to unify the conceptualization, ethical and axiological criteria underlying these basic principles, and the legal expression and legal effects, in order to make up for the lack of specific information on such subjects as torture, arbitrary detentions, the use of firearms and national and international legislation ratified by Mexico.

119. Furthermore, public servants' requests that publications and information on human rights and topics requiring special attention should be sent to and distributed at all the State police stations of the Office of the Attorney-General of the Republic have been met; seminars have been organized with the participation of the CNDH and the training institute of the Office of the Attorney-General.

Military academy

120. The CNDH has begun training courses on human rights as part of the training of personnel of the General Staff of the Armed Forces and the Mexican Air Force, as well as of managerial and teaching staff, and has also initiated special courses at the military academy, all for high-ranking officers in the Mexican Army and foreign scholarship holders.

121. The curriculum includes an analysis of currents of philosophical and ethical thought, a historical overview of the conceptual and legal development of human rights worldwide, the Mexican Constitution and international law, humanitarian law and Mexico's military legislation, and instruments for the protection of human rights, with special emphasis on the role of the Ombudsman and CNDH procedures. During 1995, 440 high-ranking officials participated in these courses.

Office of the Attorney-General of the Republic

122. The Office of the Attorney-General of the Republic, under the provisions of article 10 of the Convention, has undertaken several internal activities to disseminate, teach and promote human rights through training courses, preventive programmes for vulnerable groups, publications and the production of materials. This activity, which has been regularly repeated, has contributed to a significant reduction in the number of complaints of torture, as reflected in the CNDH's latest report.

123. The objectives of the current training programmes of the Training Institute of the Office of the Attorney-General of the Republic consist of improving the quality of service provided by agents of the Federal Public Prosecutor's Office and Federal Judicial Police agents.

124. During 1995, the Office of the Attorney-General of the Republic, through the Internal Control Unit, carried out various activities aimed not only at punishing public servants who act outside the law, but also at establishing a regular human rights training programme, in order to train its own public servants and make the administration of justice a more efficient and law-abiding undertaking in keeping with its responsibility to society.

125. The Office of the Attorney-General has also recently compiled a list of the national and international legal instruments in force in Mexico on the protection of human rights, with a view to publishing a volume containing all the texts for distribution to officers of the Federal Public Prosecutor's Department and to all the Office's public servants, as material to consult in order to carry out their duties in strict compliance with the law, always avoiding any acts which might be considered to be in violation of fundamental human rights.

Ministry of National Defence

126. The Ministry of National Defence runs courses to enhance the professionalism of public servants participating in the custody and treatment of persons subjected to arrest, detention or imprisonment.

127. The staff of the Military Justice Department has followed several courses and programmes on human rights, organized jointly by the National Autonomous University of Mexico and the Mexican Human Rights Academy, aimed at keeping the students up to date by means of coursework and lectures; the students then share their knowledge with other military staff.

128. This office of the Federal Executive has published several manuals, handbooks and instructional brochures, including the following:

Manual for the conduct of army and air force personnel in the continuing struggle against drug trafficking

Conduct in combat

On the resolution of specific cases under the rules of warfare.

129. It should be mentioned that the last two are based on the First Geneva Convention of 1949 and the International Peace Conference of The Hague.

130. The training board, institutional programmes, curricula for educational units, offices, facilities and staff of the Army and Air Force make use of material on education in and respect for human rights and on enforcement of the Federal Act to Prevent and Punish Torture; all of the above has been incorporated in a number of provisions.

Article 11

Systematic review of rules, regulations and instructions for the treatment of persons subjected to interrogation, arrest, detention or imprisonment

Penal system

131. The laws and regulations on the enforcement of judgements in criminal proceedings, which stipulate that the treatment of inmates must be dignified and humane, are as follows:

Law establishing minimum standards for the social rehabilitation of convicts and others in similar situations in all States and the Federal District

Regulations of the Federal social rehabilitation centres

Regulations of the Islas Marías Federal Penal Settlement

Regulations of the prisons and social rehabilitation centres of the Federal District

Regulations of the State social rehabilitation centres and penal establishments

Law and Rules of Procedure of the Federal District Human Rights Commission

Law and Rules of Procedure of the State Human Rights Commissions

132. The staff of the country's detention centres are supervised by local and federal agencies as well as by the respective human rights commissions.

133. The General Directorate for Prevention and Social Rehabilitation of the Ministry of the Interior appoints regional delegates, while there are also State Offices for Prevention and Social Rehabilitation, Human Rights Commissions, and General and Deputy Visitors in charge of supervising the prisons.

Interdisciplinary Technical Councils of Penal Establishments

134. There are several authorities to which inmates may bring their complaints, such as the Interdisciplinary Technical Councils of Penal Establishments, which examine cases and take action in conformity with the centre's regulations.

General Directorate of Prevention and Social Rehabilitation of the Ministry of the Interior

135. Other ways in which the General Directorate of Prevention and Social Rehabilitation of the Ministry of the Interior intervenes directly include the following:

(a) Regional delegates go to the prisons and meet with the inmates. Any complaints they receive are reported to the authorities and an investigation is undertaken, in conjunction with General Directorate staff;

(b) The "red post-boxes" of the Ministry of the Interior have been installed in the country's penal institutions, with the aim of providing inmates with a means of bringing complaints to that Ministry without having to go through the prison authorities. Inmates deposit their complaints in the post-boxes. The mail is picked up by the Mexican Postal Service, which transmits it to the Prison Post-box Coordinating Office; the Office sends the complaint or request to the General Directorate of Prevention and Social Rehabilitation for investigation and processing; and the Directorate then forwards it to the appropriate department for immediate attention. The latter communicates the outcome of the inmates' requests or complaints to them in writing;

(c) Direct correspondence from inmates or their families. The Directorate forwards such correspondence to the appropriate department for immediate attention, and the regional delegate is then asked to conduct the investigation;

(d) Department of Legal Assistance and Public Information, which reports directly to the Directorate. This deals with inmates' relatives and their complaints or requests for information. An inmate's legal file is analysed and information is given to his family, or in the case of complaints forwarded to the Private Secretary of the Director-General for attention or investigation. It is also brought to the attention of the regional delegate for investigation and follow-up.

Rights and guarantees of prisoners

136. The rights and guarantees of prisoners are embodied in the following legislation:

(a) Law establishing minimum standards for the social rehabilitation of convicts:

"Article 13, paragraph 3:

... Inmates have the right to be heard by prison officers, to register peaceful and respectful complaints and requests to outside authorities and to deliver them personally to public servants conducting official visits to prisons.

Any punishment of inmates consisting of torture or cruel treatment involving the unnecessary use of violence is prohibited, as well as so-called special cell-blocks or wings to which inmates are sent based on their economic status, by paying a fee or boarding pension ... ."

(b) Regulations of the Federal social rehabilitation centres

"Chapter X: On internal rules, article 122

All inmates may file individual complaints and requests through the Director-General's representative in the centre, who must compile and transmit them to the Directorate and follow them up."

"Chapter XI: On disciplinary measures, article 128

Inmates, on their own behalf or through relatives, their counsel or anyone they designate, may express their objection to a disciplinary measure by addressing themselves, either orally or in writing, to the Interdisciplinary Technical Council or the Directorate, which, within a period not exceeding 48 hours, shall issue a decision and communicate it to the Prison Director for enforcement and to the inmate, with a copy placed in the inmate's file."

"Article 129

In the application of punishments, all torture or ill-treatment harmful to the inmate's physical or mental health is prohibited.

Violation of this provision shall give rise to the penalties established in these regulations, without prejudice to any penal, employment-related or administrative penalties to which the staff of the Federal social rehabilitation centres may be liable."

(c) Regulations of the Islas Marías Federal Penal Settlement

"Chapter VIII: On incentives and punishments, article 52

The procedure for imposing punitive measures for infringements of these regulations shall be conducted in a single hearing, presided over by the Director of the Penal Settlement, who shall hear the offender and receive the evidence of the offence and the offender's guilt. The Director of the Penal Settlement shall then render a decision, based on these regulations and on the opinion handed down by the Interdisciplinary Technical Council."

"Article 53

It is strictly prohibited to instal punishment rooms or dungeons or to use torture or physical, mental or moral ill-treatment damaging to the health or dignity of inmates. Any violation of this article shall give rise to the immediate removal from duty of the person who procures and orders such violation, without prejudice to any corresponding penalties."

"Article 54

The offender may object to the penalty imposed on him by appealing in writing to the Directorate, within 15 days starting on the day after he is notified of the disciplinary measure."

"Article 55

"Once the appeal has been filed, the Directorate shall take a final decision within at most 10 days. The offender shall be notified of the decision."

(d) Regulations of the prisons and social rehabilitation centres of the Federal District:

"Chapter X: Internal regulations for prisons, article 136

The use of any physical or mental violence or of any procedure on the part of any authority or other persons acting at its instigation which is harmful to the dignity of inmates is prohibited."

"Article 138

... observance of decent, fair and respectful treatment of the dignity of inmates and their relatives, ..."

"Article 149

The disciplinary measures referred to in the foregoing article shall be imposed through a decision of the Interdisciplinary Technical Council, delivered at the session held immediately following the offence."

"Article 150

Inmates may not be punished without having previously been informed of the penalty to be applied and without having been given the opportunity to defend themselves."

"Article 151

When the Director or a person acting in his absence is made aware of an offence committed by an inmate, he shall order the alleged offender to be brought before the Interdisciplinary Technical Council, which shall hear him and decide on what action to take. This shall be recorded in writing, with the original placed in the inmate's file and a copy sent to the inmate. In the decision, a brief account will be given of the nature of the offence, the inmate's statement, and any disciplinary measure imposed."

"Article 152

The inmate, his relatives, counsel or any person he designates may bring action, verbally or in writing, with regard to the disciplinary measure, before the Interdisciplinary Technical Council or the Directorate, either directly or under the terms of article 25 hereof. Within a period not exceeding 48 hours, the Council or the Directorate shall issue a decision and communicate it to the Prison Director for enforcement and to the inmate."

"Article 154

The offences or violations committed by Federal District prison staff shall be punished in conformity with the Federal Act on the Responsibilities of Public Servants and the applicable criminal and employment provisions."

Article 12

Authorities in charge of the prompt and impartial investigation of acts of torture; their duties and procedures during the investigation

137. The Federal authority responsible for the prompt and impartial investigation of acts of torture is the Office of the Attorney-General of the Republic, through the Internal Control Unit, whose duties include the following, as contained in the Office of the Attorney-General Organization Act:

"Chapter V, article 8

I. To survey the organization and introduction of the integrated control system of the Office of the Attorney-General, with a view to evaluating its substantive functioning and the efficient and effective management of its resources, as well as to avoiding any irregular conduct, informing both the Attorney-General and the Office of the Comptroller and Administrative Development of the outcome, as input into the Government's evaluation and control system;

...

V. To receive, investigate and resolve, in conformity with the norms and procedures established by the Office of the Comptroller and Administrative Development and the applicable legal regulations, any complaints and accusations of misconduct by public servants;

VI. To apply the appropriate penalties to the institution's public servants, under the terms of the Federal Act on the Responsibilities of Public Servants;

VII. To draw up the lists of charges related to any irregularities discovered in the exercise of their duties ...

...

XIII. To supervise and evaluate the implementation of punitive measures instituted in response to inspections, and to enforce penalties incurred by public servants for failure to observe recommendations, under the terms of the Federal Act on the Responsibilities of Public Servants.

...

XV. To order the temporary suspension of public servants from their office, post or assignment under the terms of the Federal Act on the Responsibilities of Public Servants."

138. The Office of the Attorney-General is also the supervisory body of last resort for all Federal agents of the Public Prosecutor's Office, including the Office of the Government Procurator of the Federal District and each of the State Procurators in charge of the Public Prosecutor's Office in their jurisdiction.

Detention centres and prisons

139. Several bodies are in charge of supervising detention centres and prisons:

At the national level

140. The General Directorate for Prevention and Social Rehabilitation set up a group of regional delegates to deal with complaints and to supervise prisons. The delegates visit the institutions to conduct their supervision whether or not a complaint has been made, meet with inmates to investigate their or their families' complaints, and inform the appropriate authorities.

141. One unit of the CNDH is the Third Inspectorate for Prison Affairs, which handles all the complaints of the country's inmates, and which, through the staff it sends to the centres to investigate complaints, issues recommendations on violations of the inmates' human rights.

142. The State Human Rights Commissions have the same powers as the National Commission within each State and also conduct supervision of the centres whether or not a complaint has been made, meet with inmates to investigate their or their families' complaints, and inform the appropriate authorities.

Federal District

143. The General Directorate of Prisons and Social Rehabilitation Centres, in articles 159-161 of the regulations of the prisons and social rehabilitation centres of the Federal District, is defined as a general supervisory body, mandated to supervise, on a continuing basis, each of the prisons of the Federal District. It is made up of representatives of the following:

(a) Assembly of Representatives of the Federal District;

(b) Directorate for Social Rehabilitation;

(c) General Directorate for Prevention and Social Rehabilitation;

(d) Office of the Government Procurator of the Federal District;

(e) General Legal Coordinating Office of the Federal District Department;

(f) Superior Court of Justice of the Federal District;

(g) Directorate of Medical Services of the Federal District Department.

144. The supervisory body visits prisons to check on their administration, management and compliance with the Minimum Standards and the above-mentioned regulations. Irregularities or complaints are brought to the attention of the General Directorate and charges filed with the appropriate authorities for any unlawful acts that might have been committed.

145. The Human Rights Commission of the Federal District investigates the complaints of inmates in the prisons of Mexico City. For this purpose, staff visit the prisons to investigate complaints, to supervise and to issue recommendations if they find that the inmates' human rights have been violated.

Ministry of National Defence

146. Following the establishment of the CNDH on 6 June 1990, this Ministry issued instructions to the Office of the Military Procurator to pay special attention to each and every complaint against it, and a special unit was set up within that Office to deal with and follow up on such complaints, in accordance with the form and legal terms laid down by the CNDH.

147. In addition, the Office of the Comptroller-General and Inspection of the Army and Air Force has complaint offices, which, if an unlawful act is suspected, call on the Military Public Prosecutor's Office to investigate, and if necessary, to institute proceedings against anyone considered to be the likely perpetrator, and to file the relevant charges with the competent judicial authorities, instructing them to carry out the preliminary investigation conscientiously, thoroughly and professionally, based on legal techniques, systems and logic. Failing this, if there is insufficient evidence that an unlawful act has taken place, or if the complaint is groundless, the case is transferred to the Office of the Military Procurator for review, analysis and opinion, after which if appropriate either the case is closed and the outcome communicated to the interested parties, or else a further inquiry is ordered.

Article 13

Right to complain of torture and to be protected against ill-treatment or intimidation as a consequence of a complaint

Statistics on complaints for the offence of torture

148. In the period between May 1992 and May 1993, torture was the seventh most frequently cited form of presumed violations of human rights, according

to the CNDH, accounting for 246 cases, or 2.8 per cent, of the total of 8,793 complaints received by that body; the number of complaints of torture was down 43 per cent from the previous year.

149. In the fourth year of its existence, from May 1993 to May 1994, the CNDH received 141 complaints of torture, which represented 1.6 per cent of the 8,804 complaints submitted for presumed violations of human rights, making it the tenth commonest form of violation. From May 1994 to May 1995, complaints of torture fell by 68.1 per cent compared to the previous year. Torture was alleged by complainants in 46 cases received during that period and classified as presumed violations of human rights.

150. The decrease in cases of torture should be viewed in the light of both legislative reforms and the increase in the number of training courses, which have resulted in qualitative progress in the manner in which torture is dealt with; there is more emphasis on discovering torture even when there are no physical traces, since torturers avoid leaving any trace. Much progress has been made in training on how to conduct expert examinations to prove psychological torture.

151. Above and beyond the mere numbers, Mexico is continuing its efforts to ensure that legal and political penalties for those who commit the offence of torture are applied in full. However, the authorities still need to be made more aware of the importance of penalizing torture vigorously and in accordance with the law.

152. Two basic issues come together: the impact of the CNDH's recommendations on all sectors of society, and the political will of the authorities. Much remains to be done in both respects, but there has already been a major change in Mexican public life. Respect for human rights is slowly acquiring greater importance in our institutions, especially with regard to securing justice.

153. The Government of Mexico considers it possible to carry out, comprehensively and responsibly, the functions of public security and combating crime, while fully respecting individual guarantees. Even though the sort of culture that fosters respect for individual guarantees is still fragile, the rule of law has been strengthened and a climate of respect for human rights is being developed.

154. This demonstrates the advances made by Mexico in fulfilling its commitments under the Convention, although it has to be acknowledged that much still remains to be done, since the objective is the total eradication of torture.

Article 14

Legal and other measures for obtaining fair and adequate compensation for the victims of torture

155. The legal and other measures for obtaining fair and adequate redress and compensation for the victims of torture are enumerated in article 10 of the Federal Act to Prevent and Punish Torture, as follows:

"A person found guilty of any of the offences provided for in this Act shall have an obligation to meet the legal advice, medical, funeral, rehabilitation and any other costs incurred by the victim or his relatives as a result of the offence.

He shall also have an obligation to provide redress for the injury and to compensate the victim or his dependants in the following cases:

(i) Loss of life;

(ii) Impairment of health;

(iii) Loss of freedom;

(iv) Loss of earnings;

(v) Unfitness for work;

(vi) Loss of, or damage to, property;

(vii) Impairment of reputation.

In determining the relevant amounts, the court shall take account of the extent of the injury caused.

The State shall be obliged to provide redress for injury and damages under the terms of articles 1927 and 1928 of the Civil Code."

156. Under the latter provision, by virtue of the responsibility of the State in respect of ordinary jurisdiction and for the entire Republic in respect of Federal jurisdiction, the State has a subsidiary obligation to provide redress for the injury.

157. With regard to whether such measures are applicable both to nationals and to refugees, there can be no distinction between them, since the individual guarantees proclaimed in the Constitution protect both nationals and aliens alike; therefore, the latter must also benefit, since article 1 of the Constitution provides that all individuals are entitled to constitutional guarantees.

158. With regard to physical and mental rehabilitation programmes, it may be noted that there are programmes for taking care of the victims of offences, which are implemented by the Office of the Government Procurator of the Federal District, through the Office of the Deputy Procurator for Human Rights and the General Directorate for the Care of Crime Victims.

Article 15

Legal provisions for ensuring that any statement made under torture shall not be invoked as evidence

159. With regard to legal provisions for ensuring that any statement made under torture shall not be invoked as evidence, the Constitution provides as follows:

"Article 20. In all criminal proceedings, the accused shall enjoy the following guarantees:

I. He shall be freed on bail by the judge immediately upon request, so long as the estimated amount of any compensation for damage and of any financial penalties which may be incurred by the accused is guaranteed, and so long as the case does not involve offences of such gravity that the law expressly forbids the granting of bail.

The amount and form of bail to be set must be within the means of the accused. In circumstances determined by law, the judicial authority may reduce the amount of initial bail.

The judge may revoke the release on bail if the accused seriously breaches any of his legal obligations arising from the trial;

II. He may not be compelled to testify against himself. Any incommunication, intimidation or torture is prohibited and shall be punished by criminal law. A confession made before any authority other than the Public Prosecutor's Office or the judge, or made before them but without the assistance of counsel, may not be admitted as evidence;

III. The name of his accuser, and the nature of and grounds for the accusation, shall be made known to him in public hearing, within 48 hours after being turned over to the judicial authorities, in order that he may be clearly acquainted with the punishable act of which he is charged and is able to respond to the charge, making his preliminary plea during such hearing;

IV. If he so requests, he shall be confronted with those who testify against him, in the presence of the judge;

V. Witnesses and any other evidence he offers shall be heard, and he shall be allowed sufficient time according to the law for that purpose, and shall be assisted in securing the appearance of any persons whose testimony he requests, provided they are at the place of the trial;

VI. He shall be tried in public by a judge or jury of citizens who are literate and who live in the place and district where the offence was committed, provided that the penalty for such offence exceeds one year's imprisonment. In all cases, offences committed by means of the press against public order or the nation's internal or external security shall be tried by a jury;

VII. He shall be furnished with any information from the records of the case he may request for his defence;

VIII. He shall be tried within four months in the case of offences for which the maximum prison sentence does not exceed two years, and within one year where the sentence exceeds that period, unless he requests an extension for his defence;

IX. From the outset of his trial he shall be informed of his constitutional rights and shall have the right to an adequate defence, whether by himself, by counsel or by a person in his confidence. If he does not wish to or cannot name any counsel after having been requested to do so, the judge shall appoint one. He shall also be entitled to have his counsel present in all trial proceedings, and the latter shall be obliged to appear as often as required; and

X. In no event may imprisonment or detention be prolonged for failure to pay counsel's fees or for any other financial obligation arising from civil liability or any similar reason. Nor may preventive detention be prolonged beyond the maximum period set by law for the offence with which he is charged. Any prison sentence he may be required to serve shall include the amount of time already spent in detention.

The guarantees provided under paragraphs V, VI and IX shall also be observed during the preliminary investigation, in accordance with the terms, conditions and limitations prescribed by law; the provisions of paragraphs I and II shall not be subject to any condition. In all criminal proceedings, the victim of an offence or aggrieved party shall be entitled to legal assistance; to reparation of damage, where appropriate; to assistance by the Public Prosecutor's Office; to emergency medical care whenever required; and to any other benefit stipulated by law."

160. Article 225, paragraph XII, of the Penal Code for the Federal District in respect of Ordinary Law and for the entire Republic in respect of Federal Law states that the following constitute offences against the administration of justice committed by public servants:

"XII. Compelling the accused to testify against himself, using incommunication, intimidation or torture, ..."

Article 16

Measures to combat other acts of cruel, inhuman or degrading treatment or punishment

161. Measures to prevent ill-treatment of persons who for whatever reason are subject to the administration of justice are regulated by article 20, paragraph II (see para. 159 above), and article 22, paragraph 1, of the Constitution, which states that:

"Punishments by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or overwhelming penalties are prohibited."

162. Article 225, paragraph XII, of the Penal Code classifies the following as offences against the administration of justice committed by public servants:

"Compelling the accused to testify against himself, using incommunication, intimidation or torture, ..."

163. In addition to the constitutional provisions against cruel, inhuman or degrading punishment, article 4 of the Federal Act to Prevent and Punish Torture, which is applicable throughout the national territory in respect of Federal Law and in the Federal District in respect of Ordinary Law, sets forth the following:

"Anyone committing the offence of torture shall be liable to 3 to 12 years' imprisonment, 200 to 500 days' fine and disqualification from any public office, post or assignment for up to twice the length of the term of imprisonment imposed. For the purposes of determining the amount of the fine, reference shall be made to article 29 of the Penal Code for the Federal District in respect of Ordinary Law and for the entire Republic in respect of Federal Law."

164. In addition to the legislation described above to prevent cruel, inhuman or degrading treatment or punishment, the following measures may be considered:

(a) Increasing the penalty currently allowed by law for anyone who commits unlawful acts of cruel, inhuman or degrading treatment or punishment;

(b) The Office of the Attorney-General of the Republic is increasingly insisting on the strict application of laws, agreements and circulars to ensure that its public servants observe the highest standards of conduct;

(c) Training the Office's staff, through regular courses and professional guidance, so as better to serve the enforcement and dispensation of justice with due respect for human rights.

List of annexes*

1. Restitution, compensation and rehabilitation of the victims of grave violations of human rights, published in the Diario Oficial de la Federación, 10 January 1994.

2. Recommendation 98/95 of the National Human Rights Commission, addressed to the Governor of the State of Jalisco and to the Attorney-General of the Republic.

3. Institutional Code of Conduct and Ethics, adopted in 1995.

4. General military prison regulations.

5. Recommendation 73/91 - Case of Martín Arroyo Luna et al.

6. Recommendation 42/92 - Case of Mr. William Darío Kerguelen Pinilla.

7. Recommendation 3/90 - Case of Jorge Argáez Pérez.

8. Recommendation 29/90 - Case of the People of Aguililla, Michoacán.

9. Recommendation 1/91 - Case of Pedro and Felipe de Jesús Yescas Martínez.

10. Recommendation 15/91 - Case of Ricardo López Juárez.

11. Recommendation 50/91 - Case of José del Carmen Llergo Totosaus.

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* These documents may be consulted, in the Spanish version received from the Government of Mexico, in the records of the United Nations Centre for Human Rights.